

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1169 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
- 2 To be referred to the Reporter or not?
- 3 Whether their Lordships wish to see the fair copy of the judgment?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any Order made thereunder?
- 5 Whether it is to be circulated to the Civil Judge?

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TEXTILES LABOUR UNION, NADIAD
THROUGH AUTHORISED REPRESENTATIVE - Petitioner
Versus
UNION OF INDIA AND OTHERS - Respondents

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Appearance :

MR YN OZA, SENIOR ADVOCATE WITH MR BP GUPTA for the Petitioner.
DELETED for Respondents: 1,4 - 5.
MR SB VAKIL, SENIOR ADVOCATE WITH MR AS VAKIL for Respondents: 2 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 25/01/2007

ORAL JUDGMENT**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

1. The petitioner - Textile Labour Union has filed this petition under Articles 226 and 227 of the Constitution of India and challenged the impugned order dated 22-06-2005 (Annexure-L) passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (for short, "**AAIFR**") as well as the impugned order dated 30-10-2002 (Annexure-A) passed by the Board for Industrial and Financial Reconstruction, New Delhi (for short, "**BIFR**"), and prayed that respondent No. 2 - Mafatlal Industries Limited be directed to pay salary to the members of the petitioner - Union on the basis of current D.A. as applicable to the industry and respondent No. 2 be further directed to pay the difference of salary wef 30-11-2002 on the basis of prevalent D.A. index. Thereafter, by way of an amendment, prayer clause 12 (BB) was amended in the petition with the permission of the Court, which reads as under:

"12 (BB) Your Lordships may be pleased to issue a writ of certiorary or writ

of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction quashing and setting aside the order dated 22-6-05 passed by AAIFR."

2. It appears that there is a typographical mistake in prayer Clause 12 (B). The order was passed by BIFR and it was initially impleaded as respondent No. 5 to this petition whereas IDBI, Mumbai, which was the Operating Agency, was impleaded as respondent No. 4. Be that as it may, both these respondents i.e. Nos. 4 and 5, however, have been later on deleted from the arena of the cause-title on 10-04-2006 as per the order of this Court.

3. From the impugned order at Annexure-A passed by BIFR, it appears that the BIFR had declared respondent No. 2 - Mafatlal Industries Limited as a Sick Company in terms of Section 3 (1) (o) of the Sick Industries Companies (Special Provisions) Act, 1985 (for short, "***the Act***") and had appointed IDBI (earlier joined as respondent No. 4) under Section 17 (3) of the Act to examine the viability of the Company and submit its report, if found viable. The rehabilitation proposal submitted by the Company was

discussed at the joint meeting held on 24-09-2001 and there was broad consensus amongst the participants with the exception of few participants to the proposal submitted by the Company. State Bank of India (Lead Bank) conveyed in writing its acceptance to the proposal. At the hearing held on 14-12-2001, the Bench directed the Operating Agency to submit revised rehabilitation proposal after incorporating the response of the concerns raised by the Agency, the workers and the consortium of Banks. The impugned order was passed on 30-10-2002, whereby the BIFR had sanctioned the Scheme (running Pages 20 to 44) and para-5 envisaged RELIEFS AND CONCESSIONS for all concerned and its Clause - E for the workers / employees. The petitioner - Union is aggrieved by insertion of Clause E (v) which reads as under:

"To agree to freeze the wages at current level for next 5 years and enter into Agreement with the management to this effect."

4. It is the case of the petitioner-Union in this petition that the impugned order dated 30-10-2002, framing the Scheme passed by the BIFR, came to their knowledge somewhere in March 2003. As soon as

it had come to their knowledge, they had applied for the Certified Copy of the impugned order at Annexure-A passed by BIFR on 09-05-2003. The Certified Copy of the same was received by them on 13-05-2003 and without wasting further time, they had availed of statutory remedy of appeal before AAIFR on 19-06-2003 along with the application for condonation of delay in filing the appeal. The said appeal was dismissed by AAIFR by its impugned order dated 22-06-2005, Annexure-L, running page - 66/A, only on the ground that it was not filed within the period of limitation of 60 days and, therefore, they had no authority under the Act to condone the delay in filing the appeal late beyond the period of limitation. Hence, this order was challenged by way of an amendment, as stated earlier, by the petitioner.

5. Learned Senior Advocate Shri S. B. Vakil appearing with Shri Apoorva Vakil for respondent Nos. 2 and 3 raised the following preliminary objections:

- (i) That, in the instant case, this Court will have no jurisdiction as the BIFR and the AAIFR are both at Delhi and both the impugned

orders at Annexure-A and Annexure-L passed by the authorities respectively were also passed at Delhi and, therefore, according to his submission, only the Delhi High Court will have jurisdiction and not this Court.

(ii) Shri Vakil then submitted that, in absence of both the authorities i.e. the BIFR and the AAIFR, this Court cannot exercise its jurisdiction in favour of the petitioner. He submitted that initially, BIFR was impleaded as respondent No. 5, but later on it was deleted from the cause-title whereas AAIFR was never impleaded as party respondent.

(iii) The third preliminary objection raised by Shri Vakil was that under Section 25, AAIFR had no authority to condone the delay of more than 60 days in challenging the order passed by BIFR before it, and therefore, once the Appellate Authority i.e. AAIFR had dismissed the appeal only on the ground of limitation, this Court cannot consider the challenge to the main order passed by BIFR at Annexure-A.

(iv) The fourth preliminary objection raised by Shri Vakil is that the present petition filed at the instance of the petitioner was not maintainable because the petitioner in *stricto sensu* was not an aggrieved party.

6. However, learned Senior Advocate Shri Yatin N. Oza appearing with Shri B P Gupta for the petitioner - Union submitted that both, the Delhi High Court as well as this Court will have territorial jurisdiction as the main cause of action has arisen in the territorial jurisdiction of this Court. He submitted that the workers of the petitioner - Union are at Nadiad of State of Gujarat; their wages have been frozen as per the impugned order passed by BIFR, at Annexure-A, they would be vitally and directly affected and as they are in Gujarat, this Court will have jurisdiction. It was submitted by Shri Oza that substantial injury would be caused to them as the implementation of clause E (v) of para-5 of the Scheme sanctioned by BIFR would also be in Gujarat.

In support of his submission, Shri Oza placed

reliance on the following judgments of the Hon'ble Supreme Court:

- (i) **Om Prakash Srivastava Vs. Union of India and Another, (2006) 6 SCC 207.**
- (ii) **Navinchandra N. Majithia Vs. State of Maharashtra, (2000) 7 SCC 640.**
- (iii) **Exphar Sa and Another Vs. Eupharma Laboratories Ltd. And Another, (2004) 3 SCC 688.**
- (iv) **National Textile Corporation Limited And Others Vs. Haribox Swalram And Others, (2004) 9 SCC 786.**
- (v) **Kusum Ingots & Alloys Limited Vs. Union of India And Another, (2004) 6 SCC 254.**

The first judgment of Om Prakash Srivastava, an infamous person, is, in our considered opinion, has no relevance to the facts of this case. Om Prakash Srivastava was brought to this country under the international treaty from Singapore. He preferred to file Writ Petition before the Delhi High Court and the Delhi High Court refused to entertain it on the ground that the Allahabad High Court would be a better Court

to entertain the petition. That is not the case here in this petition.

The second judgment of Navinchandra N. Majithia is a case where a Criminal Complaint was filed at Shillong. We fail to appreciate how this judgment will have any application to the facts of this case.

The third case of Exphar Sa is a case under the Copyright Act. The same will also have no application.

The fourth case is of National Textile Corporation where the contract was cancelled. It is well-known to one and all that in such type of cases where a part of cause of action has arisen, that Court will also have the jurisdiction.

All these four cases are of Two Judges Bench of the Hon'ble Apex Court whereas the fifth and last case of Kusum Ingots & Alloys Limited (*supra*) is of Three Judges Bench. The statement of Shri Oza, on the basis of this judgment, was that in the country, there

is only one Parliament and if it enacts the law, then not only the Delhi High Court, but any other High Court, where the law is made applicable, will have jurisdiction. If we read the judgment of Kusum Ingots closely and carefully, then it clearly appears that after considering several judgments of the Hon'ble Supreme Court, the Hon'ble Supreme Court has observed in para-30 as under:

“We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See *Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney*, AIR 1941 Cal 640 : ILR (1941) 1 Cal 490; *Madanlal Jalan Vs. Madanlal*, (1945) 49 CWN 357 : AIR 1945 Cal 495; *Bharat Coking Coal Ltd. Vs. Jharia Talkies & Cold Storage (P) Ltd.*, 1997 CWN 122; *S. S. Jain & Co. Vs. Union of India*, (1994) 1 CHN 445 and *New Horizons Ltd. Vs. Union of India*, AIR 1994 Del 126.]”

7. Coming to the facts of this case, a Scheme was floated by BIFR, as per its impugned order at Annexure-A, way back on 30-10-2002, which includes several clauses. The petitioner is aggrieved with only a portion of Clause E (v) of para-5 of it whereby

the wages of the workers have been frozen for 5 years. That period would come to an end in this October 2007. When there is an agreement arrived at with the management, at the instance of Operating Agency and when BIFR had passed the order at Delhi and the appeal was also filed at Delhi, which was dismissed on the ground of limitation, then, in our considered opinion, this Court will have no jurisdiction. If at all any Court had jurisdiction, then it would be the Delhi High Court. Even assuming for the sake of argument that this Court had also parallel territorial jurisdiction, then also, relying on the judgment of 3 Judges Bench of the Hon'ble Supreme Court in Kusum Ingods case (*supra*), we would have refused to exercise our discretionary jurisdiction by invoking the doctrine of forum conveniens, as, in our considered opinion, proper forum would be the Delhi High Court.

8. In view of above discussion, we are of the considered opinion that there is lot of substance in the first preliminary objection raised by Shri Vakil for respondent Nos. 2 and 3, namely, that this Court has no jurisdiction. Therefore, without going into the merits of the case and without considering other

preliminary objections raised in this petition, we simply dismiss this petition only on the ground of territorial jurisdiction of this Court. Accordingly, this petition is dismissed. Rule is discharged. No costs.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath